



**UNITED STATES DEPARTMENT OF JUSTICE
Drug Enforcement Administration**

**Johnny C. Benjamin, Jr., M.D.
Decision and Order**

I. Procedural Background

On September 28, 2018, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause (hereinafter, OSC) to Johnny C. Benjamin, Jr., M.D. (hereinafter, Registrant) of Vero Beach, Florida. OSC, at 1. The OSC proposed the revocation of Registrant's Certificate of Registration No. BB3725732. *Id.* It alleged that Registrant has "been convicted of a felony relating to controlled substances and ha[s] no state authority to handle controlled substances." *Id.* (citing 21 U.S.C. §§ 824(a)(2) & (a)(3)).

Specifically, the OSC alleged that on April 27, 2018, Registrant was convicted by a Federal jury of: conspiracy to possess with intent to distribute furanyl fentanyl resulting in death, in violation of 21 U.S.C. § 846; distribution of furanyl fentanyl resulting in death, in violation of 21 U.S.C. § 841(a)(1); attempt to possess with intent to distribute acetyl fentanyl, in violation of 21 U.S.C. § 846; possession with intent to distribute oxycodone, in violation of 21 U.S.C. § 841(a)(1); and conspiracy to possess with intent to distribute hydrocodone and oxycodone, in violation of 21 U.S.C. § 846. *Id.* at 2. The OSC alleged that on July 6, 2018, the court issued its Judgment and sentenced Registrant to life in prison. *Id.* The OSC also alleged that, on May 3, 2018, "the State of Florida Department of Health immediately suspended Registrant's Florida Medical License." *Id.* The OSC further alleged that, as a result, Registrant is "currently without authority to handle controlled substances in the State of Florida, the state in which [Registrant] is registered with the DEA." *Id.* (citing 21 U.S.C. § 824(a)(3); 21 C.F.R. § 1301.37(b)). The OSC concluded that "DEA must revoke . . . [Registrant's] DEA registration based on [his] lack of authority to handle controlled substances in the State of Florida." OSC, at 2.

The OSC notified Registrant of the right to request a hearing on the allegations or to submit a written statement, while waiving the right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* at 2-3 (citing 21 C.F.R. § 1301.43). The OSC also notified Registrant of the opportunity to submit a corrective action plan. OSC, at 3-4 (citing 21 U.S.C. § 824(c)(2)(C)).

II. Adequacy of Service

In a sworn Declaration, dated January 17, 2019, a DEA Diversion Investigator assigned to the West Palm Beach District Office of the Miami Division (hereinafter, DI) stated that she “spoke by telephone with United States Penitentiary Coleman SIS Technician [T.B.] to determine what procedures the prison had in place for serving legal documents on prisoners and [to] make arrangements for service of the [OSC] on Registrant.” Government’s Request for Final Agency Action (hereinafter, RFAA) Exhibit (hereinafter, RFAAX) 7 (DI Declaration), at 1. DI stated that T.B. explained that T.B. “would personally serve the [OSC] on [Registrant].” *Id.* Accordingly, DI stated that, on October 10, 2018, she sent the OSC via FedEx addressed to T.B. along with an unsigned Form DEA-12, Receipt for Cash or Other items. *Id.* DI further declared that on October 18, 2018, she “received a FedEx package . . . from [T.B.] with the Form DEA-12 which had been signed by Registrant and witnessed by [T.B.], dated October 16, 2018.” *Id.*; *see also* RFAAX 7, Attachment (Form DEA-12).

Additionally, on September 28, 2018, the DEA Office of Chief Counsel (hereinafter, CC) mailed the OSC to Registrant at both his registered address and his prison address. RFAAX 6 (CC Declaration of Service). Neither letter was returned to the Office of Chief Counsel as undeliverable. *Id.*

The Government forwarded its RFAA, along with the evidentiary record, to this office on January 23, 2019. In its RFAA, the Government represents that “at least thirty days have passed since the time the [OSC] was served on Registrant” and no request for hearing has been received by DEA. RFAA, at 2. The Government requests revocation of Registrant’s DEA Certificate of

Registration, because Registrant’s “conviction of a felony relating to controlled substances, even apart from his lack of state authority, is a basis upon which his registration should be revoked” and because “DEA does not have statutory authority to maintain a registration if the registrant is without state authority to handle controlled substances.” *Id.* at 5.

Based on the DI’s and CC’s Declarations, the Government’s written representations, and my review of the record, I find that the Government accomplished service of the OSC on Registrant on (or before) October 16, 2018. I also find that more than thirty days have now passed since the Government accomplished service of the OSC. Further, based on the Government’s written representations, I find that neither Registrant, nor anyone purporting to represent the Registrant, requested a hearing, submitted a written statement while waiving Registrant’s right to a hearing, or submitted a corrective action plan. Accordingly, I find that Registrant has waived the right to a hearing and the right to submit a written statement and corrective action plan. 21 C.F.R. § 1301.43(d) and 21 U.S.C. § 824(c)(2)(C). I, therefore, issue this Decision and Order based on the record submitted by the Government, which constitutes the entire record before me. 21 C.F.R. § 1301.43(e).

III. Findings of Fact

A. Registrant’s DEA Registration

Registrant is the holder of DEA Certificate of Registration No. BB3725732 at the registered address of 1355 37th St., Suite 301, Vero Beach, FL 32960. RFAAX 1 (Certification of Registration Status). Pursuant to this registration, Registrant is authorized to dispense controlled substances in schedules II through V as a practitioner. *Id.* Registrant’s registration expired on July 31, 2020.¹ *Id.*

¹ The fact that a Registrant’s registration expires during the pendency of an OSC does not impact my jurisdiction or prerogative under the Controlled Substances Act (hereinafter, CSA) to adjudicate the OSC to finality. *Jeffrey D. Olsen, M.D.*, 84 Fed. Reg. 68,474 (2019).

B. The Status of Registrant's State License

The Government submitted evidence that the Florida Board of Medicine (hereinafter, the FBM) issued an emergency suspension of Registrant's Florida Medical License on May 3, 2018. RFAAX 4 (FBM Order of Emergency Suspension). In the Order of Emergency Suspension, the FBM noted that Registrant's "attempts to disguise his participation in illicit drug trades by using his credentials as a physician licensed in the state of Florida to purportedly be able to 'grow cannabis for patients' and to be able to traffic thousands of counterfeit oxycodone pills as 'self-prescribed cancer pills' indicate that [Registrant] lacks the good judgment [and] moral character required of a physician licensed to practice medicine in the state of Florida." *Id.* at 21. Further, the FBM found that:

[Registrant's] recurrent engagement in an unlawful and complex scheme to manufacture and distribute highly addictive and deadly controlled substances, continuing after [Registrant] had knowledge that his actions resulted in the death of another human being, and his attempts to limit his future criminal culpability by causing injury or death in a geographical location far away from him the next time it inevitably happens, indicate that [Registrant's] continued, unrestricted practice of medicine poses an immediate serious danger to the public health, safety or welfare.

Id.

The Government also submitted evidence demonstrating that FBM issued a Final Order revoking Registrant's medical license effective December 20, 2018. RFAAX 5 (FBM Final Order), at 2-3. The FBM Final Order was issued based on a complaint related to Registrant's conviction of felonies related to controlled substances. *Id.* (Attachment).

According to Florida's online records, of which I take official notice, Registrant's medical license remains revoked.² Florida Department of Health MQA Search Services, Health Care Providers, [https://appsmqa.doh.state.fl.us/MQASearch Services/HealthCare](https://appsmqa.doh.state.fl.us/MQASearch%20Services/HealthCare)

² Under the Administrative Procedure Act, an agency "may take official notice of facts at any stage in a proceeding – even in the final decision." United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. § 556(e), "[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary." Accordingly, Applicant may dispute my finding by filing a properly supported motion for reconsideration of finding of fact within fifteen calendar days of the date of this Order. Any such motion shall be filed with the Office of the Administrator and a

Providers (last visited date of signature of this Order). As such, I find that Registrant's Florida medical license is revoked.

C. Registrant's Conviction

On April 27, 2018, Registrant was found guilty by a Federal jury of: conspiracy to possess with intent to distribute furanyl fentanyl resulting in death, in violation of 21 U.S.C. § 846; distribution of furanyl fentanyl resulting in death, in violation of 21 U.S.C. § 841(a)(1); attempt to possess with intent to distribute acetyl fentanyl, in violation of 21 U.S.C. § 846; possession with intent to distribute oxycodone, in violation of 21 U.S.C. § 841(a)(1); and conspiracy to possess with intent to distribute hydrocodone and oxycodone, in violation of 21 U.S.C. § 846. RFAAX 3 (*U.S. v. Johnny Clyde Benjamin, Jr.*, Judgment in a Criminal Case, Case No 17-80203-CR-DIMITROULEAS (S.D. Fla. filed July 9, 2018)). On July 6, 2018, the court issued its Judgment and sentenced Registrant to life in prison. *Id.* at 2.

IV. DISCUSSION

A. Loss of State Authority

Pursuant to 21 U.S.C. § 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (hereinafter, CSA) “upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.” With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper,*

copy shall be served on the Government. In the event Applicant files a motion, the Government shall have fifteen calendar days to file a response. Any such motion and response shall be filed and served by e-mail on the other party at the e-mail address the party submitted for receipt of communications related to this administrative proceeding, and on the Office of the Administrator, Drug Enforcement Administration at dea.addo.attorneys@dea.usdoj.gov.

M.D., 76 Fed. Reg. 71,371 (2011), *pet. for rev. denied*, 481 F. App'x 826 (4th Cir. 2012);

Frederick Marsh Blanton, M.D., 43 Fed. Reg. 27,616, 27,617 (1978).

This rule derives from the text of two provisions of the CSA. First, Congress defined the term “practitioner” to mean “a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.” 21 U.S.C. § 802(21). Second, in setting the requirements for obtaining a practitioner’s registration, Congress directed that “[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.” 21 U.S.C. § 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner’s registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper*, 76 Fed. Reg. at 71,371-72; *Sheran Arden Yeates, M.D.*, 71 Fed. Reg. 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.*, 58 Fed. Reg. 51,104, 51,105 (1993); *Bobby Watts, M.D.*, 53 Fed. Reg. 11,919, 11,920 (1988); *Frederick Marsh Blanton*, 43 Fed. Reg. at 27,617.

According to Florida statute, “A practitioner, in good faith and in the course of his or her professional practice only, may prescribe, administer, [or] dispense . . . a controlled substance.” Fla. Stat. Ann. § 893.05(1)(a) (West, Current with laws of the 2021 First Regular Session of the Twenty-Seventh Legislature in effect through May 25, 2021). Further, “practitioner,” as defined by Florida statute, includes “a physician licensed under chapter 458.”³ Fla. Stat. Ann. § 893.02(23) (West, Current with laws of the 2021 First Regular Session of the Twenty-Seventh Legislature in effect through May 25, 2021).

³ Chapter 458 regulates medical practice.

Here, the undisputed evidence in the record is that Registrant's license to practice medicine is currently revoked. As such, he is not a "practitioner" as that term is defined by Florida statute. As already discussed, however, a physician must be a practitioner to dispense a controlled substance in Florida. Thus, because Registrant lacks authority to practice medicine in Florida, he is not currently authorized to handle controlled substances in Florida.

B. Registrant's Felony Conviction

Pursuant to section 304(a)(2) of the CSA, the Attorney General is authorized to suspend or revoke a registration "upon a finding that the registrant . . . has been convicted of a felony under this subchapter or subchapter II of this chapter or any other law of the United States . . . relating to any substance defined in this subchapter as a controlled substance or a list I chemical." 21 U.S.C. § 824(a)(2). Each subsection of Section 824(a) provides an independent ground to impose a sanction on a registrant. *Arnold E. Feldman, M.D.*, 82 Fed. Reg. 39,614, 39,617 (2017).

Here, there is no dispute in the record that Registrant has been convicted of conspiracy to possess with intent to distribute furanyl fentanyl resulting in death, in violation of 21 U.S.C. § 846; distribution of furanyl fentanyl resulting in death, in violation of 21 U.S.C. § 841(a)(1); attempt to possess with intent to distribute acetyl fentanyl, in violation of 21 U.S.C. § 846; possession with intent to distribute oxycodone, in violation of 21 U.S.C. § 841(a)(1); and conspiracy to possess with intent to distribute hydrocodone and oxycodone, in violation of 21 U.S.C. § 846, which constitutes a felony conviction "relating to" controlled substances as those terms are defined in 21 U.S.C. § 824(a)(2). 21 U.S.C. §§ 846 and 841(a)(1); *William J. O'Brien, III, D.O.*, 82 Fed. Reg. 46,527, 46,529 (2017).

Where, as here, the Government has met its *prima facie* burden of showing that two grounds for revocation exist, the burden shifts to the Registrant to show why he can be entrusted with a registration. See *Jeffrey Stein, M.D.*, 84 Fed. Reg. 46,968, 46,972 (2019). Registrant, as already discussed, failed to respond in any way to the OSC. See RFAA, at 6. Therefore, among

other things, Registrant has not accepted responsibility for his criminality, shown any remorse for it, or provided any assurance that he would not repeat it. *See Jeffrey Stein, M.D.*, 84 Fed. Reg. at 46,972-74. Such silence weighs against the Registrant's continued registration. *Zvi H. Perper, M.D.*, 77 Fed. Reg. 64,131 64,142 (2012) (citing *Medicine Shoppe-Jonesborough*, 73 Fed. Reg. 264, 387 (2008); *Samuel S. Jackson*, 72 Fed. Reg. 23,848, 23,853 (2007)); *see also Jones Total Health Care Pharmacy, LLC v. Drug Enf't Admin.*, 881 F.3d 823, 831 (11th Cir. 2018) ("An agency rationally may conclude that past performance is the best predictor of future performance." (quoting *Alra Laboratories, Inc. v. Drug Enf't Admin.*, 54 F.3d 450, 452 (7th Cir. 1995))).

Further, the CSA authorizes the Attorney General to "promulgate and enforce any rules, regulations, and procedures which he may deem necessary and appropriate for the efficient execution of his functions under this subchapter." 21 U.S.C. § 871(b). This authority specifically relates "to 'registration' and 'control,' and 'for the efficient execution of his functions' under the statute." *Gonzales v. Oregon*, 546 U.S. 243, 259 (2006). A clear purpose of this authority is to "bar[] doctors from using their prescription-writing powers as a means to engage in illicit drug dealing and trafficking" *Id.* at 270. In this case, Registrant has demonstrated the precise behavior that the Agency's authority is intended to prevent by engaging in outright drug dealing with appalling disregard for the value of human life. Registrant's behavior is "so obviously egregious that revocation is warranted." *William J. O'Brien, III, D.O.*, 82 Fed. Reg. at 46,529.

Based on the record before me, I conclude that Registrant's founded criminality and lack of state authority to handle controlled substances in his state of DEA registration each make him ineligible to maintain a DEA registration. Accordingly, I shall order the sanctions the Government requested, as contained in the Order below.

ORDER

Pursuant to 28 C.F.R. § 0.100(b) and the authority vested in me by 21 U.S.C. § 824(a), I hereby revoke DEA Certificate of Registration No. BB3725732 issued to Johnny C. Benjamin, Jr., M.D. Further, pursuant to 28 C.F.R. § 0.100(b) and the authority vested in me by 21 U.S.C. § 823(f), I hereby deny any pending application of Johnny C. Benjamin, Jr., M.D. to renew or modify this registration, as well as any other pending application of Johnny C. Benjamin, Jr., M.D. for additional registration in Florida. This Order is effective [insert Date Thirty Days From the Date of Publication in the Federal Register].

D. Christopher Evans,
Acting Administrator.

[FR Doc. 2021-12753 Filed: 6/16/2021 8:45 am; Publication Date: 6/17/2021]